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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK ENNIS,

Plaintiff,

vs.

CITY OF DALY CITY; GARY S. MCLANE,
individually and in his official capacity as
Chief of Police of the City of Daly City; Officer
KRANZ, individually and in his official
capacity as police officer of the City of Daly
City; Officer ANDRADE individually and in
his official capacity as police officer of the City
of Daly City; Sergeant O'ROURKE,
individually and in his official capacity as
police officer of the City of Daly City, and
DOES 1 through 30,

Defendants.

No. C 09-05318 MHP

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT**

Date: June 28, 2010
Time: 2:00 P.M.
Cttrm: 15, 18th Floor

**I. LEAVE TO FILE AN AMENDED COMPLAINT SHOULD BE LIBERALLY
GRANTED AT THIS EARLY STAGE OF LITIGATION**

Rule 15(A)(2) provides that leave to amend should be freely given "when justice so
requires." Federal policy strongly favors determination of cases on their merits. Leave to

1 amend the pleadings is freely given unless the opposing party makes a showing of undue
 2 prejudice, or bad faith or dilatory motive on the part of the moving party. *Foman v. Davis*
 3 (1962) 371 US 178, 182, 83 S.Ct. 227, 230; *FilmTec Corp. v. Hydranautics* (Fed. Cir. 1995)
 4 67 F3d 931, 935–936; *Martinez v. Newport Beach City* (9th Cir. 1997) 125 F3d 777, 785.
 5 While leave to amend should not be granted automatically, the circumstances under which
 6 Rule 15(a) permit denial of leave to amend are limited. *Ynclan v. Department of Air Force*
 7 (5th Cir. 1991) 943 F2d 1388, 1391. The liberal policy regarding amendment of pleadings
 8 certainly applies when amendment, as in this case, is sought before a case management
 9 deadline. See, *Coleman v. Quaker Oats Co.* (9th Cir. 2000) 232 F3d 1271, 1294 suggesting
 10 that “good cause” for amendment may be required after a deadline to amend has passed.

11 In this instance, plaintiff has filed his motion to amend within the time set in the case
 12 management order and has explained through the declaration of his counsel how new
 13 information justifies adding parties to this lawsuit. These parties are proposed to be added
 14 based on information derived through discovery which demonstrates a basis to name them in a
 15 second amended complaint. Prior to taking the deposition of Diana Colvin, plaintiff was not
 16 certain that Carson & Barnes acted in concert with the police and the Cow Palace to violate
 17 plaintiff’s rights. Since that has now been made clear, it is appropriate to add Carson &
 18 Barnes under Section 1983.

20 **II. DEFENDANTS ARE NOT UNDULY PREJUDICED IF THE COURT** 21 **GRANTS THE RELIEF SOUGHT**

22 As supported in the declaration of plaintiff’s counsel, defendants will not be prejudiced
 23 by amendment at this early stage of the litigation. The discovery cutoff is in September. The
 24 only discovery conducted to date specific to this case is the taking of Colvin’s deposition
 25 where she was represented by the Attorney General who presumably will represent 1-A
 26 Agricultural Association when it is added as a party.

27 The defendants including those newly joined will have ample time to prepare
 28 their defense before trial. The current defendants have known all along that they acted

1 in concert with the defendants sought to be joined. It was only the plaintiff who was
2 ignorant of the facts justifying amending his complaint to add the new parties.
3 The plaintiff has no motivation to delay the proceedings in any way. He has taken
4 prompt action to amend once the facts were ascertained during the deposition of Diana
5 Colvin.

6
7 **III. CONCLUSION**

8 Based on the foregoing, plaintiff respectfully requests that leave be granted to file the
9 proposed second amended complaint.

10
11 DATED: May 14, 2010

12
13 /s/ David J. Beauvais
14 Attorney for Plaintiff
MARK ENNIS